

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

Case No. 3:09-bk-0857-JAF

GREG A. McCORMICK,

Debtor.

SECRETARY OF LABOR, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

Adversary No. 3:10-ap-00016-JAF

GREG A. McCORMICK,

Defendant.

CONSENT JUDGMENT

Plaintiff, Secretary of Labor, U.S. Department of Labor ("Secretary"), a creditor of the bankruptcy estate of Greg A. McCormick, filed the present adversary complaint against Defendant Greg A. McCormick, to declare certain debts owed by Defendant as nondischargeable pursuant to 11 U.S.C. § 523. (Docket Entry #1.)

Plaintiff is invested with the responsibility of enforcing the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq., which was enacted to "protect...the interests of participants in employee benefit plans and their beneficiaries...by establishing standards of conduct, responsibility, and obligations for fiduciaries of employee benefits plans, and by providing for appropriate remedies, sanctions, and ready access to the federal courts." Section 2(b) of ERISA, 29 U.S.C. §

1001(b). Plaintiff specifically alleged in this matter that Defendant was at all relevant times, a “fiduciary” with respect to the Plan within the meaning of section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and within the meaning of 11 U.S.C. § 523(a)(4). Plaintiff further alleged that Defendant failed to forward participant contributions and participant loan repayments to the Silicon Plains 401(k) Plan (hereinafter, “the Plan”), and that his conduct constitutes defalcation while acting in a fiduciary capacity pursuant to 11 U.S.C. § 523(a)(4).

Defendant McCormick and the Secretary have agreed to resolve all matters in controversy in this action, and said parties do now consent to entry of a Judgment by this Court in accordance with the following:

A. Defendant McCormick admits to the jurisdiction of the Court over him and over the subject matter of this action. Defendant admits that this Court has the authority to enforce this Order and that this Court is the appropriate venue for any enforcement action which may be required as a result of this Order.

B. Defendant McCormick admits that he is, or was at all times relevant to this action, acting as a fiduciary to the Plan within the meaning section 3(21)(A) of ERISA and 11 U.S.C. § 523(a)(4). Defendant McCormick further admits that his conduct with respect to the Plan and with respect to Plan assets, as alleged in the present adversary complaint, constitutes defalcation while acting in a fiduciary capacity within the meaning of 11 U.S.C. § 523(a)(4). Defendant McCormick admits that any debt arising from his defalcation, including any penalty assessed pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), is non-dischargeable.

C. Defendant McCormick admits that the employee contributions and participant loan repayments, which were not forwarded to the Plan, and lost earnings on these amounts, total \$41,156.60. Defendant McCormick agrees to restore losses to the Plan resulting from his conduct, in the amount of \$41,156.60, in the manner set forth in the Order below and Attachment A to this Consent Judgment.

D. Defendant McCormick expressly waives any and all claims of whatsoever nature that he has or may have against the Secretary, or any of her officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

E. This Order represents a complete settlement of all the Secretary's claims asserted in this action against Defendant. This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendant.

F. The Secretary and Defendant expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

Accordingly, it is ORDERED ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.

2. Defendant McCormick shall make restitution to the Plan the sum of \$41,156.69, according to the terms of the installment plan attached hereto as Exhibit A, to be allocated to the accounts of all the participants and beneficiaries and former participants and beneficiaries. In the event that Defendant fails to make restitution in the amount ordered, post judgment interest shall be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961, from the date hereof until paid in full.

3. Defendant McCormick shall provide the Secretary written accountings of the amounts paid pursuant to Exhibit A, no later than seven (7) days after making each payment. The written accountings shall be sent to: the Regional Director, Employee Benefits Security Administration, U. S. Department of Labor, 2300 Main Street, Suite 1100, Kansas City, MO 64108; (816) 285-1853 (hereinafter the "Kansas City EBSA Regional Office"), and shall include copies of cancelled checks evidencing such payments.

4. After restoration of all monies to the Plan or Plan Participants, Defendant McCormick agrees to execute the documents necessary to terminate the Plan and allow distribution under the Plan. Defendant McCormick agrees to provide proof of the termination of the Plan within seven (7) days of termination to the Kansas City EBSA Regional Office.

5. After restoration of all monies to the Plan or Plan Participants, and after termination of the Plan, Defendant McCormick will be permanently enjoined from serving or acting as a fiduciary to an employee benefit plan in the future.

6. Until restoration of all monies to the Plan and proof of termination of the Plan, Defendant McCormick agrees to notify the Kansas City EBSA Regional Office within seven (7) days of any change to his residence, telephone number and mailing address.

7. This Consent Judgment resolves all claims of Plaintiff's Adversary Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under Section 502 of the Act, ERISA § 502(l), 29 U.S.C. § 1132(l).

b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.


c. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

8. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

This 23rd day of November, 2010.

I certify the foregoing to be true
and correct copy of the original.
CLERK OF COURT
U. S. BANKRUPTCY COURT

By: Maureen Hodges
Dated: November 23, 2010


JERRY A. FUNK
United States Bankruptcy Judge

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RECORDED IN THE US BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
J.C. 54, NO. 7374

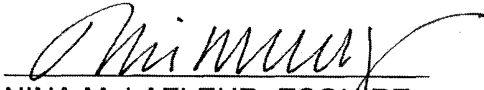
Defendant consents to entry
of the foregoing Judgment:

Plaintiff consents to entry of
the foregoing Judgment:

Respectfully Submitted,

FOR DEFENDANT

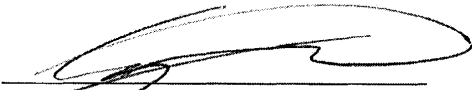
THE LAFLEUR LAW FIRM



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Date: 11.16.10



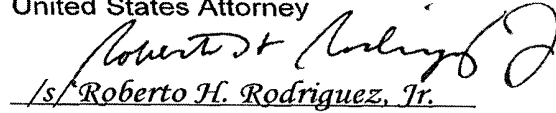
GREG A. MCCORMICK,
Defendant

Date: 9-22-2010

Respectfully Submitted,

FOR PLAINTIFF

A. BRIAN ALBRITTON
United States Attorney


/s/ Roberto H. Rodriguez, Jr.

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Date: 11.19.10

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EXHIBIT A

In re Greg A. McCormick
Case No. 09-08547-JAF

Exhibit A – Installment Plan

Payment Number	Date	Amount
1	November 1, 2010	\$200.00
2	December 1, 2010	\$200.00
3	January 1, 2011	\$200.00
4	February 1, 2011	\$200.00
5	March 1, 2011	\$200.00
6	April 1, 2011	\$500.00
7	May 1, 2011	\$500.00
8	June 1, 2011	\$1,000.00
9	July 1, 2011	\$1,000.00
10	August 1, 2011	\$1,500.00
11	September 1, 2011	\$1,500.00
12	October 1, 2011	\$1,500.00
13	November 1, 2011	\$1,500.00
14	December 1, 2011	\$2,500.00
15	January 1, 2012	\$2,500.00
16	February 1, 2012	\$2,500.00
17	March 1, 2012	\$2,500.00
18	April 1, 2012	\$3,000.00
19	May 1, 2012	\$3,000.00
20	November 1, 2012	\$3,000.00
21	December 1, 2012	\$3,000.00
22	January 1, 2013	\$3,000.00
23	February 1, 2013	\$3,000.00
24	March 1, 2013	\$3,156.69
TOTAL:		\$ 41,156.69